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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

K.S. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
SAN LUIS OBISPO,

Respondent;

COUNTY OF SAN LUIS
OBISPO DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

2d Juv. No. B293889
(Super. Ct. No. 18JD-00294)
(San Luis Obispo County)

In petitions for writ of mandate, K.S. (Mother) and C.R. (Father) challenge the juvenile court's order bypassing reunification services for their infant son, Ricardo, and setting

the matter for a permanency plan hearing. (Welf. & Inst. Code, §§ 361.5, subd. (b)(10), (11), 366.26.)¹ We affirm.

BACKGROUND

Mother and Father have three children together. They have a history of substance abuse. Their oldest two children were the subject of prior dependency proceedings in which parental rights were terminated. Ricardo was born three months after his two full siblings were adopted. Mother has four older children (Ricardo's half siblings) who were also the subject of dependency proceedings which resulted in termination of her parental rights.

When Ricardo was born, his urinary drug screen was negative. Hospital staff had "some question about the specimen." Its collection was "not witnessed" and the bag contained an "unusual amount of urine for a newborn." Ricardo was released to his parents, but a meconium sample was later found to be positive for methamphetamine and amphetamine. The County of San Luis Obispo Department of Social Services (the Department) took Ricardo into protective custody. A pediatrician examined him and reported symptoms of post-birth drug exposure. Mother later testified that she used drugs one time three months before Ricardo was born, and that she did not know at the time that she was pregnant.

The Department filed a petition in which it alleged that Ricardo was at risk of harm due to Mother's substance abuse and her inability to meet his need for safety and stability. The minor was detained.

At a contested jurisdictional and dispositional hearing, the Department recommended that services be bypassed for both

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

parents pursuant to section 361.5, subdivisions (b)(10) [prior failure to reunify with sibling or half sibling]; (b)(11) [prior termination of parental rights of sibling or half sibling]; (b)(13) [prior resistance to court-ordered drug treatment]; and (b)(15) [willful child abduction in connection with a prior dependency case]. Ricardo was thriving in foster care with the parents who adopted his two full siblings.

The juvenile court took judicial notice of the prior juvenile dependency cases. It heard testimony from Mother, Father, and a social worker. It sustained the petition. It found the Department had established by clear and convincing evidence that denial of reunification services was warranted pursuant to section 361.5, subdivisions (b)(10) and (b)(11) because Mother and Father had not successfully reunified with their children in prior dependency cases.

We disregard three exhibits attached to Mother's and Father's petitions. The documents were not part of the record before the juvenile court; are not accompanied by a request for judicial notice or a motion to augment; and are not, in any event, matters of which we could properly take notice. (Exhibits A–C [positive meconium tests after drug use; case summary of dismissed criminal case #17F-00781; and three prior appellate cases affirmed concerning bypass issues].)

DISCUSSION

Mother's and Father's petitions are not supported by citation to authority or to the record as required by California Rules of Court, rule 8.452(a) and (b). We nevertheless exercise our discretion to consider the nonconforming petitions. We conclude they are without merit.

Substantial evidence supports the juvenile court's orders sustaining the petition, denying family reunification services, and setting this matter for a permanency hearing pursuant to section 366.26. (*Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1121 [substantial evidence review].)

No reunification services are required when a juvenile court finds, by clear and convincing evidence, that services were terminated for a child's sibling or half sibling because the parent failed to reunify with them after removal; or that the parent's parental rights for a child's sibling or half sibling were permanently severed; and if the court also finds that the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling." (§ 361.5, subd. (b)(10), (11).)

The juvenile court took judicial notice of the records that establish that reunification services to Mother and Father were terminated for Ricardo's siblings or half siblings, and their parental rights were permanently severed. Substantial evidence supports the court's finding that neither Mother nor Father made a reasonable effort to treat their problems with drug use and exposure to drugs that led to the removal of Ricardo's siblings and half siblings.

Mother and Father contend Ricardo was not at risk of any harm when he was removed. They argue that the positive meconium test can be explained by Mother's single relapse when she did not know she was pregnant. They point out that Mother actively participated in drug treatment in connection with prior dependency cases, successfully (if temporarily) reunified with her other children in the past, and gave more than 180 negative drug tests in the three years before Ricardo's removal. Mother is

employed. Father states he is attending three drug and alcohol classes a week. He was injured but states he will be “looking at” job retraining. Mother and Father point out the juvenile court did not find true the allegation that they resisted prior court-ordered treatment. (§ 361.5, subd. (b)(13).)

Mother and Father also assert that criminal charges arising from a narcotics raid at their home were later dismissed. They point out that the Department acknowledged their love for Ricardo. They contend the Department demonstrated bias against them, and it is not in Ricardo’s best interests to be denied a chance to know the love and affection of his biological parents.

The record supports the juvenile court’s conclusion that reunification services had no likelihood of success. Mother participated in drug treatment at times while under court supervision, but lapsed each time the welfare case closed. She received services in 2006 for her first son, but did not reunify, and custody was awarded to his father. Mother moved back with the father and had two more sons. Their three children were removed in 2010 when she and the father went to prison for narcotics-related offenses. She had a daughter with another man and maintained sobriety for a period of time under supervision, but that daughter was removed after she moved in with Ricardo’s Father. Soon Mother and Father were arrested on charges related to narcotics in their home.

The Department provided Mother with services as to her daughter, although services could have been bypassed. Mother successfully completed that case plan. She was pregnant with a fifth child, Ricardo’s full brother. Mother agreed not to allow Father access to the children, and the case was dismissed. Six

months later Mother was living with Father and narcotics were being used in their home.

Mother gave birth to another daughter, Ricardo's full sister, and narcotics use in the home continued. A warrant for protective custody of the three children in Mother and Father's care was issued. Mother and Father absconded with Ricardo's two full siblings, while his half sister went into protective custody. Services were bypassed as to all three children, and parental rights were terminated. The children were adopted while Mother was pregnant with Ricardo. Given this history, Mother's use of controlled substances, even once while pregnant with Ricardo, demonstrates the futility of further services.

Father was provided services for Ricardo's full brother in 2014, but did not follow his case plan and did not reunify. The juvenile court awarded custody to Mother and dismissed the case. As previously noted, Mother resumed living with Father and they had another child, Ricardo's full sister. Law enforcement officers came to their home multiple times in connection with substance abuse and narcotics sales before the warrant for protective custody of Ricardo's siblings was issued in 2017 and they absconded with two of the children. The court bypassed services for Father and terminated his parental rights. His chronic substance abuse and failure to protect his children from narcotics in the home have continued unabated. Father asserts that he is attending substance abuse classes, but denied that he has a problem with drugs as recently as the contested hearing for Ricardo. Further services would be futile.

DISPOSITION

We deny the petition for writ of mandate.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Charles S. Crandall, Judge

Superior Court County of San Luis Obispo

K.S., in pro. per., for Petitioner.

C.R., in pro. per., for Petitioner.

No appearance for Respondent.

Rita L. Neal, County Counsel, Ann D. Duggan, Deputy
County Counsel, for Real Party in Interest.